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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,902	09/25/2003	Karen M. Braun	A2227-US-NP	6024

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BASCH & NICKERSON LLP
1777 PENFIELD ROAD
PENFIELD, NY 14526

EXAMINER

DHINGRA, PAWANDEEP

ART UNIT	PAPER NUMBER
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2625

MAIL DATE	DELIVERY MODE
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04/02/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/670,902

Applicant(s)

BRAUN, KAREN M.

Examiner

PAWANDEEP S. DHINGRA

Art Unit

2625

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 February 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: The proposed amendments to claim 4 are still not supported by the specification and raises new matter, plus, once the examiner is clear on the subject matter claimed, it would require further consideration.. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-17.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Twyler L. Haskins/
Supervisory Patent Examiner, Art Unit 2625

/P. D./
Examiner, Art Unit 2625

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 2/28/2008 have been fully considered but they are not persuasive.

With respect to applicant's arguments, on page 7, that Newman fails to anticipate viewing the target under the illumination for which characterization is desired, and utilizing this viewing of the target under the illumination for which characterization is desired to select one of the metamer pairs.

In reply, Newman discloses viewing the target under the illumination for which characterization is desired (see abstract; paragraphs 2, 10, 18, 39-40, 45-65, note that regression analysis is applied to the targets to obtain a single best fit for viewing the target (destination image) under the illumination for which characterization is desired).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., utilizing this viewing of the target under the illumination for which characterization is desired to select one of the metamer pairs) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to applicant's arguments, on page 7, that Newman fails to teach that the target is actually viewed under the illumination for which characterization is desired prior to selecting the metamer pair.

In reply, the examiner asserts, that Newman clearly teaches viewing the target under the illumination for which the characterization is desired prior to selecting the metamer pair (see paragraphs 7-18, note that "multiple different inverse appearance transforms are applied to a color value in perceptual color space (such as Lab or JCh space), one each for multiple different viewing conditions (such as different viewing illuminants), thereby resulting in plural different target color values in a viewing condition dependent space (such as XYZ space), one each in correspondence to the multiple different viewing conditions. A single, "best fit", color value in device coordinates is then obtained for the plural different target color values in viewing condition dependent space").

Furthermore, the examiner asserts that the objections to the drawings are valid, for example, none of the drawing(s) disclose the method for any of the method claims.